



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Rappahannock Regional Solid Waste Management Board
FOR
R-Board Landfill
VPDES Permit Registration No. VAR051413**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Rappahannock Regional Solid Waste Management Board, regarding the R-Board Landfill, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2014 Permit" means VPDES Permit No. VAR05, the VPDES General Permit for Stormwater Discharges Associated with Industrial Activity, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expired on June 30, 2019. R-Board applied for coverage under 2014 General Permit No. VAR05 for the R-Board Landfill Facility, and was issued Registration No. VAR051413 on August 14, 2014.
2. "2019 Permit" or "Permit" means VPDES Permit No. VAR05, the VPDES General Permit for Stormwater Discharges Associated with Industrial Activity, which was issued

under the State Water Control Law and the Regulation on July 1, 2019 and which expires on June 30, 2024. R-Board applied for coverage under the 2019 General Permit No. VAR05 for the R-Board Landfill Facility, and was issued Registration No. VAR051413 on September 10, 2019. A Permit Authorization Change was completed on January 10, 2021, to add Outfall 009 to the permit coverage.

3. “305(b) report” means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
4. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
5. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10
8. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. “DMR” means Discharge Monitoring Report.
10. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
11. “Facility” or “Landfill” means the R-Board Landfill, located at 489 Eskimo Hill Road in Stafford County, Virginia, from which discharges of stormwater associated with industrial activities occurs. The Facility, is a municipal solid waste landfill for citizens of Stafford County and the City of Fredericksburg is owned and operated by “R-Board,” and is also known as the R-Board Sanitary Landfill.
12. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

13. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
14. "O&M" means operations and maintenance.
15. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
16. "PCB" means Polychlorinated Biphenyls.
17. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
18. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
19. "R-Board" means the Rappahannock Regional Solid Waste Management Board, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.*, comprised of representatives from Stafford County and the City of Fredericksburg. "R-Board" is a "person" within the meaning of Va. Code § 62.1-44.15.
20. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
21. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
22. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
23. "TMDL" means total maximum daily load.

24. "Va. Code" means the Code of Virginia (1950), as amended.
25. "VAC" means the Virginia Administrative Code.
26. "VPDES" means Virginia Pollutant Discharge Elimination System.
27. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. R-Board operates the Facility, which is a municipal solid waste landfill. The 2014 Permit allowed, and the 2019 Permit allows, R-Board to discharge stormwater associated with industrial activities from the Facility, to unnamed tributaries to Accokeek Creek, in strict compliance with the terms and conditions of each Permit.
2. The unnamed tributaries receiving discharge from the Facility have been neither monitored nor assessed. Based on DEQ's 2020 305(b) report, Accokeek Creek is impaired for recreation use due to bacteria. Tidal Potomac Creek is located approximately 11 miles downstream from the facility's outfalls. According to the 2020 305(b) report, Tidal Potomac Creek is impaired for the aquatic life use based on pH continuous monitoring data, and for the fish consumption use due to PCBs in fish tissue. The Tidal Potomac PCB TMDL is complete, and this facility is located within the Stafford direct drainage area and was not asked to monitor for PCBs.
3. In submitting its DMRs, as required by the 2014 and 2019 Permits, R-Board reported the following monitoring data for stormwater effluent discharges from the Facility:

July 1, 2018 through December 31, 2018 effluent limit DMR:

- a. Reported a minimum pH concentration of 5.63 S.U. at Outfall 001, compared to a permitted minimum limit of 6.0 S.U.
- b. Reported a Total Suspended Solids monthly average concentration of 28 mg/L at Outfall 002, compared to a permitted limit of 27 mg/L.

July 1, 2019 through December 31, 2019 effluent limit DMR:

- c. Reported a minimum pH concentration of 3.50 S.U. at Outfall 008, compared to a permitted minimum limit of 6.0 S.U.
- d. Reported a Total Recoverable Zinc monthly average concentration of 0.259 mg/L at Outfall 008, compared to a permitted limit of 0.11 mg/L.
- e. Reported a Total Recoverable Zinc daily maximum concentration of 0.259 mg/L at Outfall 008, compared to a permitted limit of 0.20 mg/L.

January 1, 2020 through June 30, 2020 effluent limit DMR:

- f. Reported a minimum pH concentration of 3.71 S.U. at Outfall 008, compared to a permitted minimum limit of 6.0 S.U.

- g. Reported a Total Recoverable Zinc monthly average concentration of 0.111 mg/L at Outfall 008, compared to a permitted limit of 0.11 mg/L.
- h. Reported a Total Suspended Solids daily maximum concentration of 110 mg/L at Outfall 008, compared to a permitted limit of 88 mg/L.

July 1, 2020 through December 31, 2020 effluent limit DMR:

- i. Reported a minimum pH concentration of 3.17 S.U. at Outfall 007, compared to a permitted minimum limit of 6.0 S.U.
- j. Reported a minimum pH concentration of 3.41 S.U. at Outfall 008, compared to a permitted minimum limit of 6.0 S.U.
- k. Reported a Total Recoverable Zinc monthly average concentration of 0.709 mg/L at Outfall 007, compared to a permitted limit of 0.11 mg/L.
- l. Reported a Total Recoverable Zinc daily maximum concentration of 0.709 mg/L at Outfall 007, compared to a permitted limit of 0.20 mg/L.
- m. Reported an Ammonia, as N monthly average concentration of 5.87 mg/L at Outfall 007, compared to a permitted limit of 4.9 mg/L.
- n. Reported a BOD₅ monthly average concentration of 135 mg/L at Outfall 008, compared to a permitted limit of 37 mg/L.

January 1, 2021 through June 30, 2021 effluent limit DMR:

- o. Reported a minimum pH concentration of 3.28 S.U. at Outfall 008, compared to a permitted minimum limit of 6.0 S.U.
 - p. Reported an Ammonia, as N monthly average concentration of 5.78 mg/L at Outfall 007, compared to a permitted limit of 4.9 mg/L.
 - q. Reported a BOD₅ monthly average concentration of 72.6 mg/L at Outfall 008, compared to a permitted limit of 37 mg/L.
- 4. Part IV.E. of the 2014 and 2019 Permits lists the numerical effluent limitations for stormwater discharges from the Facility.
 - 5. DEQ issued two Warning Letters (WLs) and a Notice of Violation (NOV) to R-Board as follows:
 - a. WL No. W2020-09-N-1010 dated September 29, 2020;
 - b. WL No. W2021-03-N-1006 dated March 9, 2021; and
 - c. NOV No. W2021-08-N-0008 dated August 20, 2021.
 - 6. R-Board corresponded with DEQ throughout the enforcement process, submitting written replies to the WLs and NOV, and having a conference call with DEQ staff on September 21, 2021, to discuss enforcement proceedings after issuance of the NOV. R-Board explained that some local soils at the Facility have naturally occurring chemical properties (i.e. high Sulphur content and highly acidic) are the primary cause of the effluent limit violations.

7. R-Board submitted a stormwater mitigation compliance schedule with its NOV reply on August 27, 2021, and R-Board submitted a Corrective Action Plan to DEQ on October 6, 2021. DEQ sent R-Board comments on the Corrective Action Plan on October 27, 2021, and had a conference call with representatives of R-Board on November 8, 2021.
8. The Regulations, at 9VAC25-151-70, require R-Board to comply with the requirements of the 2014 Permit and 2019 Permit as an owner whose registration statement has been accepted by the Board.
9. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
10. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
11. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
12. The Department has issued no VPDES permits or certificates to R-Board for the Facility other than VPDES Permit No. VAR051413.
13. The unnamed tributaries of Accokeek Creek that receive discharges from the Facility are surface waters located wholly within the Commonwealth and each is a “state water” under State Water Control Law.
14. Based on the DMRs submitted by R-Board, the WL and NOV responses submitted by R-Board, and related correspondence between DEQ and representatives of R-Board, including the August 27, 2021 NOV reply and September 21, 2021 conference call, the Board concludes that R-Board has violated 9VAC25-31-50, 9VAC25-151-70, and Part IV.E of 2014 and 2019 Permits, by discharging stormwater associated with industrial activities from the Facility while concurrently failing to comply with the conditions of the Permits.
15. In order for R-Board to return to compliance, DEQ staff and representatives of R-Board have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders R-Board, and R-Board agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of R-Board for good cause shown by R-Board, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2021-08-N-0008 dated August 20, 2021, WL No. W2021-03-N-1006 dated March 9, 2021, and WL No. W2020-09-N-1010 dated September 29, 2020. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, R-Board admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. R-Board consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. R-Board declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by R-Board to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. R-Board shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. R-Board shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. R-Board shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;
and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and R-Board.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after R-Board has completed all of the requirements of the Order;
 - b. R-Board petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to R-Board.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve R-Board from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by R-Board and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of R-Board certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind R-Board to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of R-Board.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, R-Board voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 4th day of March, 2022



Thomas A. Faha, Regional Director
Department of Environmental Quality

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Consent Order

Rappahannock Regional Solid Waste Management Board; VPDES Permit Registration No. VAR051413

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The Rappahannock Regional Solid Waste Management Board voluntarily agrees to the issuance of this Order.

Date: 12-16-2021 By: Licky L. Markwardt Landfill Superintendent
(Person) (Title)

Rappahannock Regional Solid Waste Management Board

Commonwealth of Virginia

City/County of Stafford

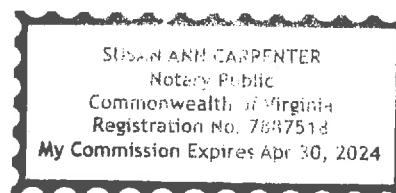
The foregoing document was signed and acknowledged before me this 16 day of December, 2021, by Licky L. Markwardt who is Landfill Superintendent of the Rappahannock Regional Solid Waste Management Board, on behalf of the Board.

Susan A. Carpenter
Notary Public

7887518
Registration No.

My commission expires: 4-30-24

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

R-Board shall:

1. Comply with the terms of its Corrective Action Plan (CAP) dated October 6, 2021, revised December 1, 2021.
2. By January 10, 2022, and by July 10 and January 10 each calendar year for the duration of this Order and CAP, CAP monitoring reports are to be submitted to DEQ in accordance with section IV.B of the CAP.
3. A full return to compliance shall be demonstrated no later than January 10, 2023. This includes completion of all items required by the CAP, and demonstrating compliance with permitted effluent limits for stormwater discharges from the Facility at all permitted outfalls.
4. Unless otherwise specified in this Order, R-Board shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Northern Regional Office
Attention: Enforcement
13901 Crown Court
Woodbridge, VA 22193